In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 552

CHATSWORTH COOPERATIVE MARKETING ASSOCIATION, ET AL., PETITIONERS

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE INTERSTATE COMMERCE COMMISSION AND THE UNITED STATES OF AMERICA IN OPPOSITION TO PETITION FOR CERTIORARI

Pursuant to Section 222(b) of the Interstate Commerce Act, 49 U.S.C. Section 322(b), the Interstate Commerce Commission instituted this proceeding to enjoin petitioners from engaging in interstate for-hire transportation without first obtaining the requisite operating authority from the Commission. On December 3, 1964, petitioners entered into a stipulation admitting that the transportation operations conducted by them are in violation of the Interstate Commerce Act. A consent decree was entered by the district court pursuant to that stipulation, but the effective

date was postponed to permit petitioners to pursue their right to appeal. Petitioners' application for a writ of certiorari is predicated on the contention, rejected by the court of appeals (Pet. 1a-3a), that the Interstate Commerce Act unconstitutionally trenches on the President's power to execute the laws of the United States because Section 222(b) enables the Commission to sue in a district court to enforce the Act.

The court of appeals was clearly correct in ruling that "the function of initiating a judicial proceeding for the enforcement of a legislative enactment is not the exercise of a prerogative exclusively reserved to the President" (Pet. 3a). The authority of Congress to delegate to administrative agencies the implementation and enforcement of statutory standards is no longer open to question. By Section 222(b), Congress has simply authorized the Commission, in its own name, to apply to the appropriate district court for an injunction to restrain activities in violation of the Interstate Commerce Act. The right of the Commission to proceed under that Section has been considered and affirmed. See, *e.g.*, *United States and Interstate Commerce Commission* v. *Lassiter*, 203 F. Supp. 20 (W.D. La.), affirmed, 371 U.S. 10; *United States and Interstate Commerce Commission* v. *City of Jackson, Mississippi*, 318 F. 2d 1 (C.A. 5). Similar authority has been conferred by statute on various other administrative agencies,[1] and the issuance of injunctions pur-

[1] *Eg.* 49 U.S.C. 1487 (Civil Aeronautics Act); 15 U.S.C. 77v(a) (Securities Act); 15 U.S.C. 78aa (Securities Ex-

suant to such statutes has been sustained by this Court with no hint of constitutional infirmity. *E.g.*, *Porter, Price Administrator* v. *Warner Holding Co.*, 328 U.S. 395; *Capital Service Inc.* v. *National Labor Relations Board*, 347 U.S. 501; cf. *Deckert* v. *Independence Corp.*, 311 U.S. 282; see *Federal Housing Administration* v. *Burr*, 309 U.S. 242.

There is no conflict with *United States* v. *Cox*, 342 F. 2d 167 (C.A. 5), certiorari denied, 381 U.S. 935 (Pet. 6-14). The *Cox* case merely held that a United States Attorney cannot be compelled to sign an indictment returned by a grand jury in a criminal proceeding, and that his signature is essential to the validity of the indictment. That holding is plainly irrelevant to the question presented here.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General.

ROBERT W. GINNANE,
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change Act); 15 U.S.C. 79y (Holding Company Act); 16 U.S.C. 825m (Federal Power Act); 15 U.S.C. 53 (Federal Trade Commission Act); 29 U.S.C. 160(l) (National Labor Relations Act); 12 U.S.C. 1702 (National Housing Act).

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